IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.511 OF 2003

1.Smt.Shakila Bano Mohd.Muslim
Ansari and others. ... Petitioners.

vs.

1.Mohd.Shamim Mohd.Amin Ansari
and others. ... Respondents.

Mr.Chetan Kapadia i/b. Harakchand & Co., for Petitioners.

Mr.A.A.Sayed, for Respondents 1 and 2.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd March, 2005.

P.C.:-

1. By this petitioner, the petitioners challenge the Award made by the Arbitrators. Perusal of that Award shows that by that Award the tenancy rights in relation to the premises in the City of Bombay have been decided.

The learned counsel for the petitioners relying on the judgment of Supreme Court in the case of “Natraj Studios (P)Ltd., Vs. Navrang Studios and another, AIR 1981 Supreme Court 537.” submits that the petitioners dispute the existence of arbitration agreement, and even if it is assumed that such an arbitration agreement exists, then that agreement is invalid because it is the Small Cause Court which has exclusive jurisdiction to decide the tenancy rights in relation to the premises. The learned counsel relies on the observation of the Supreme Court in paragraph 17 of the Judgment, which reads as under:-

> “The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the

> legislative mandate which requires certain kind of disputes to be settled by special Courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognized by a Court of Law."

It is clear from the aforesaid observations in the judgment, that there cannot be a valid arbitration agreement to refer the dispute about the tenancy of the premises to which The Maharashtra Rent Control Act applies or the Bombay Rent Act which was previously in force, applies. Therefore, even assuming that there was an arbitration agreement between the parties in relation to the tenancy of the premises and that the Award which is impugned in this petition amounts to an Award, then also it cannot be sustained in view of the judgment of the Supreme Court. In the result therefore, the petition succeeds. The Award impugned in the petition is set aside. The respondents to pay costs of this petition to the petitioners as incurred by the petitioners.

22.3.2005 ---